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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM:

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.9502 OF 2015

1. Girija Choudhary
 2. Devender Kumar Gupta
 3. Frances
 4. Rajkumar Sureka
 5. Seema Goyal
 6. Madanlal Gupta
- ... Petitioners/Accused

.Vs.

1. The Inspector of Police,
B-6, Police Station (L& O),
Peela Medu,
Coimbatore City.
- ... 1st Respondent/Complainant
- 2.K.Bhavani Shankar
- ... 2nd Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the final report dated 14.11.2013 filed in crime No.1481 of 2011 which is now culminated into C.C.No.38 of 2014 now pending on the file of the learned Judicial Magistrate VI Coimbatore.

For Petitioners : Mr.M.Aravind Subramaniam

For 1st Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



ORDER

This Criminal Original Petition is filed to call for the records in crime No.1481 of 2011, which is now culminated into C.C.No.38 of 2014, pending on the file of the Judicial Magistrate VI, Coimbatore and quash the same.

2. The first respondent filed a final report against the petitioners/accused under Sections 147, 447, 427 & 506 (1) r/w 109 IPC alleging that the defacto complainant K.Bhavani Shankar is the Managing Director of M/s. Karthikeya Ancillaries Private Limited and he is also the owner of an extent of 5.82 acres in Souripalayam village, T.S.No.471/2, 472/1, 472/3. There was an agreement entered into with M/s.Presidiyam Construction (P) Ltd., and its subsidiary company M/s.Emami Reality (P) Ltd, and New Age Reality (P) Ltd for joint development agreement. The aforesaid companies have not taken steps for starting construction. Therefore, the agreement with the aforesaid companies was cancelled by M/s. Karthikeya Ancillaries Private Limited on 29.04.2010, which resulted in enmity between the administration of the aforesaid companies and the defacto complainant. In pursuance of this enmity, on 12.05.2011, at about 10 a.m., accused 1, 2, 3 and 5 and some other unidentifiable hooligans, illegally trespassed into the premise of M/s. Karthikeya Ancillaries Private Limited, broke upon the gate and damaged cement slabs and glasses worth Rs.60,000/-. In the course of the same transaction, on 21.05.2011 at about 8.30 a.m., accused 1 to 3 again criminally trespassed into the premise of M/s.Karthikeya Ancillaries Private Limited, threatened the defacto complainant to kill him. Therefore, the accused 1 to 3 have committed offences under Sections 147, 447 & 427 IPC, the second accused has committed offences under Sections 447 & 506(1) IPC and accused 4 to 6 have committed offences under Sections 447, 427 r/w 109 IPC. Challenging the final report, the petitioners/accused have filed this quash petition.

3. The learned counsel for the petitioners submitted that their company M/s.Emami Reality (P) Ltd was looking for land and for suitable business opportunities in Coimbatore. The second petitioner was entrusted to look for suitable properties and business opportunities in Coimbatore. In November 2006, one Suresh Menda introducing himself as Director of M/s.Presidium Constructions Coimbatore (P) Limited, Coimbatore, hereinafter referred to as 'PCCL' approached the second petitioner D.K.Gupta and claimed that the company M/s. Karthikeya Ancillaries Private Limited hereinafter referred to as 'KAPL' owned about 5.82 acres



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of land, bearing Door No.290, Avinashi Road, Tirupur Textiles at Coimbatore. PCCL and KAPL have entered into a joint venture agreement dated 18.10.2006 and supplementary agreement dated 15.11.2006 for developing the said property into a commercial complex. One Ms.Anjana Vasanthakumar is the Managing Director, her sister's husband Mr.K.Bhavani Shankar is the Executive Director and her sister Abarna Katragadda is the other Director of the said KAPL. Several joint meetings were held with the Directors of KAPL. It was revealed by the Directors of KAPL, on 18.10.2006 that the original title deeds of the property were lying in the custody of Punjab National Bank, Dr.Nanjappa Road Branch, Coimbatore. Since the property was already mortgaged with the bank by KAPL, the bank had already initiated necessary debts recovery tribunal proceedings against KAPL. Therefore, they approached M/s.Emami Reality (P) Ltd to bail them out of their financial crises, assuring suitable consideration will be paid to the Company by way of certain arrangements relating to the property. Upon considering the project proposal in absolute good faith and believing the representations and documents produced by KAPL and PCCL to be genuine, consented in principles and arranged funds to the extent of 5.75 crores and paid the same to Punjab National Bank to release the documents of KAPL. The entire sum of Rs.5.75 crores was paid by Demand Draft on 20.12.2006. Consequently, the company in the name and style of 'New Age Realty (P) Ltd, Kolkata, was incorporated for the execution of the project and the share holding was agreed to be in the ratio of 60:40 between the Company and PCCL. The JDA assignment, an area assignment agreement on 23.03.2007, the earlier agreements dated 18.10.2006 and 15.11.2006, were entered between KAPL and PCCL. As per the terms of JDA assignment agreement, the company paid a sum of Rs.2.68 crores to PCCL. A further sum of Rs.25lakhs was paid on 12.07.2008 to the Special Purpose Vehicle. All the payments have been made to the knowledge and at the instance of PCCL. The second respondent/defacto complainant sought for certain injunctive relief under Section 9 of the Arbitration and Conciliation Act, 1996, by filing AOP No.157/2010 on 21.04.2010 before the Principal District Judge, Coimbatore making it clear their intent to cheat the petitioners' company. The defacto complainant gave a complainant making bald allegations against the petitioners.

4. In pursuance of the agreement for joint development, petitioners prepared a preliminary plan through a Canadian Architect on payment of Rs.63,52,250/-. Subsequently, it was found that a portion of land was encroached by the defacto complainant in Government Poromboke land. When it was questioned with the defacto complainant, it was informed that a litigation is pending. Due to this unforeseen circumstances, the approval for construction was stalled. At the request of defacto



complainant, petitioners had paid Rs.6,36,00,000/- on various dates towards the development of the project. This complaint is with an ulterior motive. The matter was taken in Arbitration and Arbitration Award was also passed confirming the rights of the petitioners in the land and also their possession. The Arbitration Award in Claim Nos.1, 1A, 2, 3 & 4 of 2015 is that so far as the joint development agreement is concerned, the license to enter upon the place remains with New Age Reality (P) Ltd. It is pertinent to note that the defacto complainant K.Bhavani Shankar is the fifth respondent in Claim Nos.3 and 4 of 2015. The Arbitration Award was passed in favour of the New Age Reality (P) Ltd. Thus the learned counsel for the petitioners prays for quashing the criminal proceedings.

5. This matter is pending from the year 2015. There was no representation for the second respondent. When the matter was posted for hearing on 05.04.2022, it is seen that private notice sent to the second respondent was returned with an endorsement 'no such person'. Today also there is no representation for the second respondent. Paragraph 141 of the award in claim Nos.1, 1A, 2, 3 & 4 of 2015 reads as follows:

141. It has also been found that New Age is entitled to recover a sum of Rs.50,00,000/- advanced to Karthikeya during the subsistence of the contract. This amount was advanced as a loan. This amount has become repayable only in view of this award putting an end to the contract. Interest to be paid was not stipulated. Therefore, New Age would be entitled to recover this amount with interest thereon at 12% per annum from the date of this award till the date of its recovery unless the same is tendered or paid by Karthikeya to New Age on or before 01.09.2017. New Age is also entitled to possession or control of the project site until the amounts due to it under this award is tendered or paid to it by Karthikeya. New Age is not entitled to any damages as claimed in the absence of any foundation therefor and in the absence of any evidence thereon.

Defacto complainant/2nd respondent is the 5th respondent in claim Nos.3 and 4 of 2015. It is made clear that New age is entitled to possession and control of project site until the amounts due to it under this award is tendered or paid to it by KAPL. In view of the Arbitration award was passed after the issues between the parties had been resolved in the Arbitration, this Court is of the considered view that the continuation of



criminal case against the petitioners would be an exercise of absolute harassment of the petitioners. Therefore, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions, if any, is also closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate VI,
Coimbatore.
2. -Do Thro The Chief Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
B-6, Police Station (L & O),
Peela Medu,
Coimbatore City.
4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Aravind Subramaniam, Advocate, S.R.No.27020

CRL.O.P.NO.9502 OF 2015

GP(CO)
PBS/26/05/2022